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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re DANIEL T., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. DANIEL T., Defendant and Appellant.	A146352 (Contra Costa County Super. Ct. No. J13-01134)

In 2013, Daniel T. (the minor) admitted one count of grand theft from a person (Pen. Code,[1] § 487, subd. (c)), a felony at that time. In connection with his admission, the minor was required to submit a DNA sample to the state databank. (§ 296, subd. (a)(1).)

After the electorate passed Proposition 47, which reduced certain crimes—including theft of property valued at less than $950—to misdemeanors, the minor petitioned to have his violation reduced to a misdemeanor, and to have his DNA record

[1] All further undesignated statutory references are to the Penal Code.

expunged from the state database.[2] The juvenile court reduced the minor's violation to a misdemeanor but denied his DNA expungement request.

The minor appeals, arguing that since misdemeanants are not required by law to provide a DNA sample for the state database, his existing sample should be expunged because he is no longer a felon. We affirm.

BACKGROUND

In November 2014, the voters enacted Proposition 47. One of its provisions, section 1170.18, makes certain theft related offenses, including theft of property under $950, misdemeanors, and creates a procedure for individuals previously convicted of felonies now considered misdemeanors to have those convictions reduced to misdemeanors. (See *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) In June 2015, the minor filed a petition to redesignate his felony grand theft violation to misdemeanor petty theft pursuant to Proposition 47. (§§ 490.2, 1170.18.) The petition also requested the minor's DNA sample be removed from the state database.

In July 2015, the juvenile court redesignated the minor's felony adjudication, but denied the minor's request for DNA expungement. Adopting its reasoning from *In re S.B.-W.* (Super. Ct. Contra Costa County, 2015, No. J13–01068), the juvenile court concluded Proposition 47 did not require expungement of the minor's DNA.[3]

The minor timely appealed. A few weeks later, in October 2015, the Governor signed Assembly Bill No. 1492 (2015–2016 Reg. Sess. (Bill No. 1492 or bill)) amending section 299, which governs expungement of DNA records. The bill inserted a reference to section 1170.18 into a list of statutes that *do not* authorize a judge to relieve a person of the duty to provide a DNA sample. After the parties completed briefing, our

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[2] When the record of a person's DNA sample is expunged, "his or her DNA specimen and sample [is] destroyed and searchable database profile [is] expunged from the databank program." (§ 299, subd. (a).)

[3] The parties in this matter agreed to be bound by the juvenile court's ruling in *In re S.B.-W.*; the juvenile court briefing in that case, as well as the transcript from the section 1170.18 hearing is included in the record on appeal in the instant case.

colleagues in Division One affirmed the juvenile court's denial of an identical DNA expungement request. (*In re J.C.* (2016) 246 Cal.App.4th 1462, 1467 (*J.C.*).)

DISCUSSION

The minor contends the court erred by failing to expunge his DNA from the state database after reclassifying his felony adjudication to a misdemeanor pursuant to Proposition 47. Relying on *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209 (*Alejandro N.*), the minor claims the court was required to grant his DNA expungement request, and that Bill No. 1492 does not preclude DNA expungement.

Under section 299, subdivision (a), a person can seek expungement of his or her DNA record "if the person has no past or present offense or pending charge which qualifies that person for inclusion within the [state databank] and there otherwise is no legal basis for retaining the specimen or sample or searchable profile." Section 299 identifies particular circumstances in which expungement may be sought, including when the underlying conviction or disposition has been reversed and the case dismissed or when the person is found factually innocent of the underlying offense. (§ 299, subd. (b.).) At the time the minor sought expungement, section 299, subdivision (f) provided: "Notwithstanding any other provision of law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] . . . if a person . . . was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296, or . . . pleads no contest to a qualifying offense as defined in subdivision (a) of Section 296."

In *Alejandro N., supra,* 238 Cal.App.4th 1209, the Fourth District Court of Appeal held a person whose felony offense has been redesignated as a misdemeanor under Proposition 47 is entitled to expungement of his or her DNA record if there is no other basis for retaining it. (*Alejandro N.*, at pp. 1227, 1230.) The court reasoned "[t]he plain language of section 1170.18, subdivision (k) reflects the voters intended [a] redesignated misdemeanor offense should be treated exactly like any other misdemeanor offense, except for firearm restrictions" and concluded, given their choice "to extend the benefits

of Proposition 47 on a broad retroactive basis[,] . . . the voters likewise intended to provide retroactive relief with regard to retention of already-secured DNA samples." (*Alejandro N., supra,* 238 Cal.App.4th at pp. 1227-1228.)

Two months after *Alejandro N., supra,* 238 Cal.App.4th 1209 was decided, Bill No. 1492 was signed into law with an effective date of January 1, 2016. (Stats. 2015, ch. 487; *J.C., supra,* 246 Cal.App.4th at p. 1471.) As relevant here, the bill amended section 299, subdivision (f) "by inserting '1170.18' into the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample." (*J.C.,* at p. 1472.) Thus, section 299, subdivision (f) now provides, "Notwithstanding any other law, including Sections 17, 1170.18, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide [a DNA sample] . . . if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense . . . ."

In a thorough and well-reasoned opinion, the *J.C.* court explained the relationship between Proposition 47, DNA collection, and Bill No. 1492. (*J.C., supra,* 246 Cal.App.4th at pp. 1469-1472.) There, the court held Bill No. 1492 "prohibit[s] the expungement of a defendant's DNA record when his or her felony offense is reduced to a misdemeanor pursuant to section 1170.18." (*J.C., supra,* 246 Cal.App.4th at p. 1475.) *J.C.* further held "[b]ecause Bill No. 1492 clarifies, rather than changes, the meaning of the relevant provisions of Proposition 47, the bill precludes the granting of requests for expungement made prior to its enactment." (*J.C., supra,* 246 Cal.App.4th at pp. 1467-1468.)

The *J.C.* court declined to address the validity of *Alejandro N.* in light of the fact that "Bill No. 1492 requires the denial of the minor's request for expungement." (*J.C., supra,* 246 Cal.App.4th at p. 1469.) Finally, the court found no inconsistency between Proposition 47 and Bill No. 1492. (*Id.* at p. 1482.) In so holding, the court explained that inasmuch as "Proposition 47 neither requires nor prohibits the expungement of DNA records, Bill No. 1492 does not . . . amend the proposition." (*J.C., supra,* 246 Cal.App.4th at p. 1482.) The court added that even if the bill could be treated as an

amendment, rather than a clarification, "it would satisfy the proposition's requirement that any amendment be consistent with and further its intent." (*Ibid.*) The court concluded that because "Proposition 47 does not clearly either require or prohibit the expungement . . . of previously provided DNA samples, there is no basis for finding the prohibition of expungement in Bill No. 1492 to be inconsistent with the intent of the proposition." (*J.C.*, *supra*, 246 Cal.App.4th at p. 1483, fn. omitted.)

Recently, our colleagues in Division Three have adopted *J.C.*'s reasoning and have concluded the juvenile court properly denied a DNA expungement request after reducing a felony violation to a misdemeanor pursuant to Proposition 47. (See *In re C.H.* (2016) 2 Cal.App.5th 1139, 1143-1151, review granted Nov. 16, 2016, S237762; *In re C.B.* (2016) 2 Cal.App.5th 1112, 1117-1128, review granted Nov. 9, 2016, S237801; but see *C.B.* at pp. 1128-1138 (dis. opn. of Pollak, J.); see also Cal. Rules of Court, rule 8.1115(e) [cases pending on review may be cited for persuasive value].) We perceive no distinction between this case and *J.C.* that would provide any basis for reaching a different result here, and we therefore conclude that the juvenile court properly denied the request for expungement.

DISPOSITION

The juvenile court's order denying the minor's request for an order to expunge his DNA records from the state database is affirmed.

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REARDON, ACTING P. J.

We concur:

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RIVERA, J.

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STREETER, J.